## Mieles, Janette

**From:** Taylor, Karen

Sent: Wednesday, July 03, 2013 5:44 PM

**To:** Jamison, Rebecca **Cc:** Mcchesney, Dennis

**Subject:** RE: UST EPAct regulations-- Field Citation Legal Analysis

If you speak with EQB about this again, just remind them that the owner/operator has to sign the field citation first and that the waiver of right to appeal language has to be there.

If EQB signs the field citation first, then it creates an order with the right to appeal in court.

From: Jamison, Rebecca

Sent: Wednesday, July 03, 2013 1:38 PM

**To:** Wanda Garcia; Ospina, Janneth; Feliberty Ruiz, Annette; Cecilia Rivera; McChesney, Dennis; Taylor, Karen; rebecaacosta@jca.gobierno.pr; suzettemelendez@jca.gobierno.pr; melvinsotomayor@jca.gobierno.pr; Sanchez Santiago, Nilda del Mar; Arroyo Rivera, Hector; inesrodriguez@jca.gobierno.pr

Cc: Jamison, Rebecca

**Subject:** UST EPAct regulations--finalize Field Citation Legal Analysis/Thoughts

I am forwarding an analysis by R2 Attorney Karen Taylor on the legal authority for an EQB Field Citation program so we can discuss further today. Also the Attached File is a copy of R2's Field Citation, Please note it is issued as an "Offer to Settle"

From: Taylor, Karen

Sent: Tuesday, June 18, 2013 5:36 PM

**To:** Jamison, Rebecca; <u>barnhart bethany@bah.com</u>

**Cc:** McChesney, Dennis

Subject: PR UST reg - EQB penalty authority/field citations

The Environmental Public Policy Act, Law 416, gives the EQB the authority to impose penalties in Section 16 Penalties paragraph (C) without expressly limiting this authority to the attorneys.

The Section to which the EQB program must be referring on the conference call is Section 12 Hearings, Orders, and Judicial Proceedings. That section gives the party the right to a hearing in accordance with the provisions of the Puerto Rico Uniform Administrative Procedures Act.

So the inspectors presumably could issue field citations, but the party could request a hearing on the field citation which would involve the attorneys.

See the sections below.

Law 416, Section 16 – Penalties

- (a)Any person who infringes any provision of this chapter or the rules and regulations adopted thereunder, or who fails to comply with any resolution, order or agreement dictated by the Board, shall be guilty of a misdemeanor, and upon conviction, punished by a fine not lesser than two hundred dollars (\$200) and not greater than five hundred dollars (\$500). In the discretion of the court, an additional fine of five hundred [dollars] (\$500) may be imposed for each day the violation persisted.
- (b) In addition to the fine minimum specified in this chapter, the Board, represented by the Secretary of Justice or his/her attorneys, is hereby authorized to resort to any court with competent jurisdiction to recover the total value for damages to the environment and/or the natural resources of Puerto Rico caused by such violation.
- (c) The Environmental Quality Board is hereby empowered to impose administrative fines and sanctions for infractions of this chapter, or of the orders, rules, and regulations issued and approved by the Board under this chapter.

Administrative fines shall not exceed twenty-five thousand dollars (\$25,000) for each infraction, being it understood that each day the infraction persists shall be deemed to be a separate violation.

(d) In the event that the Board should make a finding of contempt in the commission or continuance of acts for which an administrative fine has already been imposed or in the commission or continuance of acts in violation of this chapter and the regulations thereunder, or a finding of contempt in the noncompliance with any order or resolution issued by

the Board, the latter, in exercising its discretion, may impose an additional administrative fine up to a maximum of fifty thousand dollars (\$50,000) for any of the acts indicated herein.

- (e) Any person who knowingly makes any false representation, certification or statement under this chapter, the regulations approved thereunder, who knowingly makes any false representation in any report required by the Board under this chapter or the regulations thereunder; or who knowingly and so as to produce inaccurate results, alters any tracking facility or method that has been required by the Board, shall be guilty of a misdemeanor, and upon conviction, punished by a fine not lesser than one hundred dollars (\$100) and not greater than five hundred dollars (\$500). (f) The amounts collected on account of administrative fines imposed by the Board and all civil and criminal fines
- (f) The amounts collected on account of administrative fines imposed by the Board and all civil and criminal fines imposed by the courts under the provisions of this chapter shall be covered into the Special Account Set For the Environmental Quality Board.
- (g)The Environmental Quality Board is hereby empowered to impose administrative fines and sanctions against any person who violates any provision established in the Air Operation Permit Program under Title V of the Clean Air Act, as amended, or any permit condition or any application charges or fees imposed pursuant to such Program. The administrative fine thus imposed shall not exceed twenty-five thousand dollars (\$25,000) for each infraction, being it understood that each day the infraction persists shall be deemed to be a separate violation.
- (h) The Board, represented by its attorneys or by any other attorney it may designate, or by the Secretary of Justice or his/her attorneys, is hereby authorized to resort to any court with competent jurisdiction in order for civil penalties to be imposed or recovered, which penalties shall not exceed twenty-five thousand dollars (\$25,000) for each violation, against any person who violates any provision established under the Air Operation Permit Program, Title V of the Clean Air Act, as amended, any term or condition of any permit issued under such Program, any order issued by such Program, or any application charges or fees imposed by such Program, being it understood that each day the infraction persists shall be deemed to be a separate violation.
- (i)Any person who knowingly violates any provision established in the Air Operation Permit Program under Title V of the Clean Air Act, as amended, or any condition of the permit or any permit application charges or fees imposed by such Program, and any person who knowingly makes any material statement, representation or certification that is in any way false on any notices or reports required by any operation permit under Title V of the Clean Air Act, as amended, or who knowingly renders inoperative any sampling equipment or method required pursuant to the Program, shall be guilty of a felony, and upon conviction, sanctioned by a fine not lesser than one thousand dollars (\$1,000) and not greater than twenty-five thousand dollars (\$25,000) for each violation, being it understood that each day the infraction persists shall be deemed to be a separate violation, with punishment by imprisonment for the fixed term of one (1) year. Should there be aggravating circumstances, the fixed imprisonment term may be increased up to a maximum of eighteen (18) months; should there be mitigating circumstances, the term may be reduced down to a minimum of six (6) months.
- (j)Any person affected by violations of the Operation Permit Program under Title V of the Clean Air Act, as amended, is hereby empowered to appear before the courts to enforce compliance by the owner or operator with the provisions of the Program and/or the permit, as the case may be, after the person thus affected has notified the Board about the violation and the latter has not taken any administrative action on the matter within sixty (60) days as of the date of notice. Should the court determine that a violation has been committed, the latter may order an adequate remedy and/or impose the civil penalties established in subsection (h) of this section.
- (k)The amounts collected on all administrative fines imposed by the Board and the amounts collected on civil and criminal fines imposed by the courts shall be covered into the Special Account Set For the Environmental Quality Board. The amounts collected on civil and criminal fines imposed by the courts under subsections (h), (i) or (j) of this section or which are attributable to violations of permits under Title V of the Clean Air Act, as amended, shall be destined to environmental research projects.

Law 416, Section 12 - Hearings, orders, and judicial proceedings

(a) The Governing Board of the Environmental Quality Board shall hold public hearings, either motu proprio or by request of an interested party, in connection with matters relative to the implementation of this chapter. In carrying out these efforts, it may compel the appearance of witnesses and the presentation of documents, and allow or disallow evidence and take oaths from witnesses, which authorities it may delegate onto examining officials or administrative judges.

- (1) Hearings held by the Governing Board shall be presided by one or more examining officials or administrative judges, who shall be designated by the Chair or by the Governing Board, respectively, and who shall be attorneys-at-law, officials or employees of the Environmental Quality Board or members of the Governing Board or legal consultants or experts on the matter under discussion who have been contracted for hearing purposes. Such hearings may also be presided by attorneys, officials or employees of the Environmental Quality Board or by members of the Governing Board or legal consultants or experts on the matter under discussion who have been contracted for hearing purposes, onto whom the Governing Board has delegated the authority to adjudge and who shall be designated by the latter as administrative judges.
- (2) The Board shall set the date, time, and place for holding the hearing and notify the interested parties, which may appear pro se or represented by an attorney.
- (3) The Board shall issue either a resolution as pertinent or its decision within a reasonable term after the hearing has been held, not to be greater than sixty (60) days, and notify each of the parties interested with a copy thereof. Notice of the resolution or decision of the Board shall be given by certified mail and enclose a certification from the Secretary of the Board.
- (4)Any person adversely affected by a resolution, order or decision of the Governing Board may request the latter to reconsider its determination or request a review by the Court of Appeals of Puerto Rico, pursuant to the provisions of the Puerto Rico Uniform Administrative Procedures Act, §§ 2101 et seq. of Title 3.
- (5) Filing a request for administrative reconsideration or for judicial review shall not exempt any person from com-plying with or obeying any decision or order of the Governing Board, nor shall such action operate under any circum-stance as a suspension or postponement of the effectiveness thereof, unless there is a special order of the Governing Board or the Court of Appeals of Puerto Rico.
- (6) Judicial reviews shall be conducted based on the administrative record of proceedings before the Governing Board, as such record has been certified by the Secretary of the Board. Determinations of the Governing Board in connection with facts shall be conclusive if sustained by substantial evidence.
- (7) The Governing Board shall hold public hearings prior to authorizing and promulgating any rules or regulations that the same may submit under this chapter. Hearings shall be held pursuant to the norms established for such purposes by the Governing Board, in compliance with the provisions of the Puerto Rico Uniform Administrative Procedures Act, §§ 2101 et seq. of Title 3. Regulations, guidelines, and orders to establish internal norms and directives, may be adopted without submission to this norm.

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email: <u>Taylor.Karen@epa.gov</u>

Note that this message may contain privileged material, including attorney-client or attorney work product. If you inadvertently received this email, please contact Karen Taylor at the address above.

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R2 UST website: <a href="http://www.epa.gov/region02/ust/">http://www.epa.gov/region02/ust/</a>

